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EXAMINER

COHEN, AMY R

ART UNIT PAPER NUMBER

2859

DATE MAILED: 12/09/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/050,520

Applicant(s)

GIEWERCER, HARRY

Examiner

Amy R Cohen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on RCE and Amendment 11/12/04.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 59-83 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 59-83 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 18 January 2002 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Drawings

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the aperture in the support member of claims 59-67, the aperture in the loop member of claims 68-71, and the aperture of the support member in claims 72-83 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Objections

2. Claims 59, 62 and 75 are objected to because of the following informalities:

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Claim 59 is missing a period at the end of the claim.

Claim 62, line 3 "ant-rotation" should read --anti-rotation--.

Claim 75, line 3 "ant-rotation" should read --anti-rotation--.

Appropriate correction is required.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 59, 61-67, 72, 74, 75, 77, 79-83 are rejected under 35 U.S.C. 102(b) as being anticipated by Carlson (U. S. Patent No. 1,317,660).

Carlson teaches in a reminder device, the device comprising: a cylindrical container (Fig. 1) having an exterior surface; a deformable engageable sheet (5) mountable as a continuous loop member around said exterior side surface of said container, said loop member rotatable to each of a plurality of selectable positions (Col 1, lines 26-52); a deformable support sheet member (1) influencing movement of said loop member, said support member including an aperture (4) and said support member adapted to engage said loop member in said aperture (Figs. 1 and 3).

Carlson teaches the device including anti-displacement means for engaging said loop member with said support member to disallow displacement of said loop member from one of said selectable positions (Examiner interprets "displacement" to mean either rotational displacement or vertical displacement of the loop member. Therefore, the anti-displacement

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means includes the slits (4) and the adhesive at lines 2 on the label, which prevent vertical displacement).

Carlson teaches the device wherein said anti-rotation means is one chosen from a list which includes a détente, an anti-rotation détente, an aperture, a tooth, a label sheet, a deformable member, an adherable member, a notch, and adhesive member, a tab (The anti-displacement means includes the slits (4) and the adhesive at lines 2 on the label, which prevent vertical displacement).

Carlson teaches the device including co-operating indicia ("O'CLOCK" on the label and the numbers (7) on the loop).

Carlson teaches the device wherein said co-operating indicia include an arrangement of times (7) co-operating with a pointer (3) adapted to point to any one of said times (the pointer, 3, indicates the desired indicia).

Carlson teaches the device including an adhesive (Col 1, lines 26-30 and lines 40-45).

Carlson teaches the device wherein said container is a pharmacy container (Col 1, lines 9-11).

Carlson teaches the device including a pharmacy label (Col 1, lines 9-11).

Carlson teaches in a reminder device, the device comprising: a cylindrical container (Fig. 1) having an exterior surface; a deformable engageable sheet (5) said sheet adapted to adhesively (6) form a continuous loop member (Col 1, lines 40-45); said continuous loop member retainable on said container (Fig. 1) and said continuous loop member movable to each of a plurality of selectable positions (Col 1, lines 31-52); a deformable support sheet member (1) influencing movement of said loop member, said support member including an aperture (4) and said support member adapted to engage said loop member in said aperture (Figs. 1 and 3).

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Carlson teaches the device wherein said indicia can be further customized (Col 2, lines 53-59, "invention may be varied in many ways within the scope..." indicates that the indicia may be further customized.)

Carlson teaches the device including a pharmacy label (Col 1, lines 9-11).

5. Claims 59, 61-64, 68-72, 74, 75, 77-79 are rejected under 35 U.S.C. 102(b) as being anticipated by Shrader (U. S. Patent No. 6,311,840).

Shrader teaches in a reminder device (Figs. 1-7), the device comprising: a cylindrical container (32) having an exterior side surface (Figs. 6 and 7); a deformable engageable sheet mountable as a continuous loop member (13) around an exterior side surface of said container, said loop member rotatable to each of a plurality of selectable positions (Col 5, lines 14-36); a deformable support sheet member (12) influencing movement of said loop member (Col 5, lines 14-36), said support member including an aperture (Fig. 3, above and below the indicia on 12) and said support member adapted to engage said loop member in said aperture (prongs 24a, Figs. 4 and 5).

Shrader teaches the device including anti-displacement means for engaging said loop member with said support member to disallow displacement of said loop member from one of said selectable positions (Col 5, lines 14-36).

Shrader teaches the device wherein said anti-displacement means is one chosen from a list which includes a détente, an aperture, a tooth, a label sheet, a deformable member, an adherable member, a notch, an adhesive member, a tab (Col 5, lines 14-36).

Shrader teaches the device including co-operating indicia (indicia are letters or numerals).

Shrader teaches the device wherein said co-operating indicia include an arrangement of times (see Fig. 1, numerals on 12) co-operating with a pointer (27) adapted to point to any one of said times (the pointer, 27, indicates the desired indicia).

Shrader teaches a reminder device, the device (Figs. 1-7) comprising: a cylindrical container (32) having an exterior side surface; a deformable engageable sheet (13) including an aperture (27), said sheet adapted to adhesively form a continuous loop member (Examiner notes that claim language of claim 62, "said sheet adapted to adhesively form a continuous loop member" does not limit the structure to read on an element that has two portions which form a loop. Therefore, as long as the Shrader reference teaches a deformable sheet, which is capable of forming a loop, it is considered to satisfy the claim language. In this case, the loop 13 is formed from a deformable sheet and is in a loop.); said continuous loop member retainable on said container and said continuous loop member movable to each of a plurality of selectable positions (Col 5, lines 14-36); a deformable support sheet member (12) influencing movement of said loop member, said support member including a tab extension (Fig. 3, tabs located near reference number 25), said tab locatable in said aperture to engage said loop member (Col 5, lines 14-36).

Shrader teaches the device including anti-displacement means for engaging said loop member with said support member to disallow displacement of said loop member from one of said selectable positions (Col 5, lines 14-36).

Shrader teaches the device wherein said anti-displacement means is one chosen from a list which includes a détente, an aperture, a tooth, a label sheet, a deformable member, an adherable member, a notch, an adhesive member, a tab (Col 5, lines 14-36).

Shrader teaches the device including co-operating indicia (indicia are letters or numerals).

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Shrader teaches a reminder device, the device (Figs. 1-7) comprising: a cylindrical container (32) having an exterior side surface; a deformable sheet (13), said sheet adapted to adhesively form a continuous loop member (Examiner notes that claim language of claim 72, "said sheet adapted to adhesively form a continuous loop member" does not limit the structure to read on an element that has two portions which form a loop. Therefore, as long as the Shrader reference teaches a deformable sheet, which is capable of forming a loop, it is considered to satisfy the claim language. In this case, the loop 13 is formed from a deformable sheet and is in a loop.); said continuous loop member retainable on said container and said continuous loop member movable to each of a plurality of selectable positions (Col 5, lines 14-36); a deformable support sheet member (12) influencing movement of said loop member, said support member including an aperture (Fig. 3, above and below the indicia on 12) and said support member adapted to engage said loop member in said aperture (prongs 24a, Figs. 4 and 5).

Shrader teaches the device wherein said indicia can further be customized (Col 4, lines 30-34 and Col 7, lines 30-36).

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 60, 73, and 76 are rejected under 35 U.S.C. 103(a) as being unpatentable over Carlson in view of Trimble-Gomez (U. S. Patent No. 5,711,425).

Carlson discloses the device as described above.

Carlson does not disclose the device wherein said loop member is included in a first portion and said support member is included in a second portion of a common deformable sheet; and wherein said loop member portion is releasable from said common sheet.

Trimble-Gomez discloses a reminder device comprising a cylindrical container (16) having an exterior side surface; a deformable engageable sheet member mountable as a continuous loop member (32); and a deformable support sheet (20); wherein said loop member is included in a first portion and said support member is included in a second portion of a common deformable sheet (Fig. 2); and wherein said loop member portion is releasable from said common sheet (Col 3, lines 46-66).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the device of Carlson to have the continuous loop member and the support sheet be of a common deformable sheet and detachable therefrom, as taught by Trimble-Gomez, in order to ensure that the medication label and the indicator are correlated and so that only one deformable sheet is needed per medicine bottle.

Response to Arguments

8. Applicant's arguments with respect to claims 59-83 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The following patents disclose indicating devices Key (U. S. Patent No. 6,649,007), Kaplan (U. S. Patent No. 6,581,773), Kaplan (U. S. Patent No. 6,276,533), Luoma (U. S. Patent

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No. 6,032,609), Deal (U. S. Patent No. 5,979,698), Key (U. S. Patent No. 5,884,421), Silverson (U. S. Patent No. 5,586,087), Shah (U. S. Patent No. 4,724,973), Fish (U. S. Patent No. 3,921,568), Baxter (U. S. Patent No. 3,460,508), Lerner (U. S. Patent No. 2,767,680), Petterson, Jr. (U. S. Patent No. 2,567,395), Rolnick (U. S. Patent No. 2,320,472), Mehaffey (U. S. Patent No. 2,111,637), Sterki (U. S. Patent No. 734,991), and Chapman (U. S. Patent No. 576,834).

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Amy R Cohen whose telephone number is (571) 272-2238. The examiner can normally be reached on 8 am - 5 pm, M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Diego F. Gutierrez can be reached on (571) 272-2245. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

ARC
December 7, 2004



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